

The Checklist provided that the Area Director is responsible for the consultations required under IGRA and IRA with applicants, nearby Indian tribes and state and local government officials. Consultation, according to the Checklist, will usually be conducted by letter, but not to the exclusion of other means, like public hearings. Through the consultation process, officials and nearby tribes are to be advised of the application and invited to provide specific information relevant to the two-part determination. Appropriate state and local officials under IGRA are defined as including the Governor of the state in which the land is located, and the government officials of any city, county, parish or borough within 30 miles of the site. Nearby tribal officials are defined as including tribal governing bodies of all tribes located within 100 miles of the site. Interior witnesses said the mileage limits in the September 1994 official Checklist have changed over time, and were based only on what seemed reasonable in terms of who could be affected by the decision. The Checklist also instructed Area Directors to give applicants an opportunity to address or correct any problem raised during the consultation process.

The Checklist further directs the Area Director to “prepare specific Proposed Findings of Fact with citations to supporting exhibits or documentation” and to forward them to the central office:

These findings must address each of the factors of 25 CFR 151.10 but should include any additional findings independently made by the Area Director on issues or matters that will facilitate a decision. The Area Director’s discussion or narrative of each Finding should lead the reader to conclude that the Area Director independently analyzed the factors and made the findings. Simply incorporating the findings made by the Tribe is not sufficient.